

SN: 09/631,502  
Amendment dated September 10, 2003  
Reply to Office action mailed June 10, 2003

## **REMARKS**

The Office Action mailed June 10, 2003, has been received and carefully reviewed. Reconsideration and withdrawal of the rejections of the claims of the above-identified application is respectfully requested. The amendment to the specification is to correct a typographical error. Claim 7 has been amended to correspond with language in the specification. New claim 24 is supported by the specification and drawings as originally filed, for example, at page 4, lines 11-16 and in figures 4 and 6. The changes to FIGS. 4 and 6 are supported by the specification as originally filed, for example, at page 6, lines 13-21. In amended FIG. 4, the distraction height dH has been added. In amended FIG. 6, the distraction height dH, the cutting height cH, and elements 13 and 14 have been added. No new matter has been added.

### **Drawings**

Formal drawings incorporating the proposed changes are attached. Also attached is an annotated sheet showing the changes.

### **Rejection under 35 U.S.C. § 112, second paragraph**

Claims 7-13 are rejected as being indefinite. Independent claim 7 has been amended to recite "distraction height", as suggested by the Examiner. Withdrawal of the rejection is respectfully requested.

### **Rejections Under 35 U.S.C. §102(b)**

1. Claims 7-13, 22 and 23 are rejected as being anticipated by Jarvis (US 5,685,673). The Examiner asserts that Jarvis teaches every element of the claimed instrument. Applicants respectfully traverse the rejection.

Independent claims 7 and 22 recite a blade having a height dimension with first and second cutting edges at first and second ends of the height dimension, respectively, and a distracting dimension greater than the height dimension. This feature is shown in FIG. 4, and results in a blade with an oblong cross-section. The blade of Jarvis has a circular cross-section, as shown in FIGS. 9, 11, 19 and 21, in which the dimension

SN: 09/631,502

Amendment dated September 10, 2003

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between first and second cutting edges (34, 39 in FIG. 9) is the same as the dimension between any other opposing points on the drill bit. All of the cross-section figures of Jarvis show the drill bit as having a circular shape. Because the drill bit of Jarvis is cylindrical, there is no feature that has a distracting dimension. Jarvis fails to teach a distracting dimension greater than a height dimension, as is required by the claims. The Examiner cites FIG. 19 of Jarvis as showing a blade with a diagonal dimension greater than the height dimension. Claim 22 as originally presented recited a distraction height dimension greater than a cutting height dimension. As stated above, FIG. 19 of Jarvis shows a circular cross-section of the drill bit in which every dimension is the same. Thus Jarvis fails to teach a distraction height dimension greater than a cutting height dimension.

The Examiner states that the drill of Jarvis is not cylindrical or circular in cross-section because the drill has fluted sections. However, the overall effect of the cutting edges and flutes that make up the drill of Jarvis is circular in cross-section, as shown in FIGS. 19 and 21. That Jarvis discloses a drill with flutes is not questioned. What Jarvis fails to teach is a device with a distracting dimension greater than a height dimension between first and second cutting edges, as is presently claimed. The blade of Jarvis has first and second cutting edges (34' and 39' in FIGS. 19 and 21). However, no feature of the drill of Jarvis has a dimension greater than the height between the two cutting edges. FIG. 4 of the present application clearly shows a device with a distracting dimension between points 13, 14, that is greater than the height dimension between cutting edges 11, 12.

Regarding claims 8, 10 and 12, Jarvis is asserted as disclosing, in FIGS. 18 and 19, a collecting element overlying a portion of the first concave surface. However, Jarvis teaches FIGS. 18 and 19 as a "left-hand" drill with spiral flutes 32' and 33' that terminate in cutting lips 34' and 39' (see column 5, lines 1-6). FIG. 18 of Jarvis clearly shows flute 33' terminating in cutting lip 34', which, in addition to straight non-cutting lip 35', are flush with the flute. No collecting element on the leading end of the blade, overlying a portion of the concave surface, is shown in the figures or description of Jarvis. Withdrawal of the rejection is respectfully requested.

SN: 09/631,502

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2. Claims 14-16 and 20-23 are rejected as being anticipated by McGurk-Burlson et al. (US 4,867,157). McGurk-Burlson et al. is cited for disclosing a curette with an undulating blade, first and second cutting edges and a collecting element (channels 90 and 91). However, the channels 90 and 91 of FIGS. 11-14 in McGurk-Burlson et al. only function as collecting elements in combination with the outer tube 215. McGurk-Burlson et al. do not teach a collecting element at the leading end of the blade and overlying a portion of the concave surfaces of the blade. Even if the channels 90 and 91 of McGurk-Burlson et al. are interpreted as being collecting elements, they are not located at the leading end of the blade, but rather extend along the length of the blade. Additionally, the channels 90 and 91 do not overly a portion of the concave surfaces, but actually are the concave surfaces of the blade. Thus, McGurk-Burlson et al. does not teach each and every element of the claims and cannot be seen to be anticipatory. Withdrawal of the rejection is respectfully requested.

Claims 22 and 23 are included in the rejection, but are not addressed by the Examiner. McGurk-Burlson et al. fail to teach a blade with a distraction height dimension greater than a cutting height dimension. The blade of McGurk-Burlson et al. is cylindrical, thus all dimensions are equal.

**Rejection under 35 U.S.C. § 103(a)**

Claims 17-19 are rejected as being unpatentable over McGurk-Burlson et al. in view of Jarvis. The Examiner asserts that it would have been obvious to provide the device of McGurk-Burlson et al. with the cutting and non-cutting orientations of the device of Jarvis since it is well known in the art to provide drills or curettes with such orientations. Applicants respectfully traverse the rejection.

As stated above, McGurk-Burlson et al. fails to teach a curette with the blade and collecting element configuration of independent claim 14. Jarvis does not provide what McGurk-Burlson et al. lacks. Additionally, neither McGurk-Burlson et al. nor Jarvis teach or suggest the collecting element with a tapered surface and collecting surface as is recited in claim 19. Neither McGurk-Burlson et al. nor Jarvis teach or suggest a blade

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with a collecting element. Both references teach blades with flutes or channels that are flush with the end of the blade. Nothing in either reference teaches or suggests a blade with a collecting element overlying a portion of the concave surfaces, as is recited in independent claim 14. Therefore, the combination of McGurk-Burlson et al. and Jarvis fails to teach or suggest the elements of the claims. Withdrawal of the rejection is respectfully requested.

It is respectfully submitted that each of the presently pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332.5300

Date: Sept 10, 2003

  
Name: Nancy J. Parsons  
Reg. No.: 40,364  
DGS/NJP

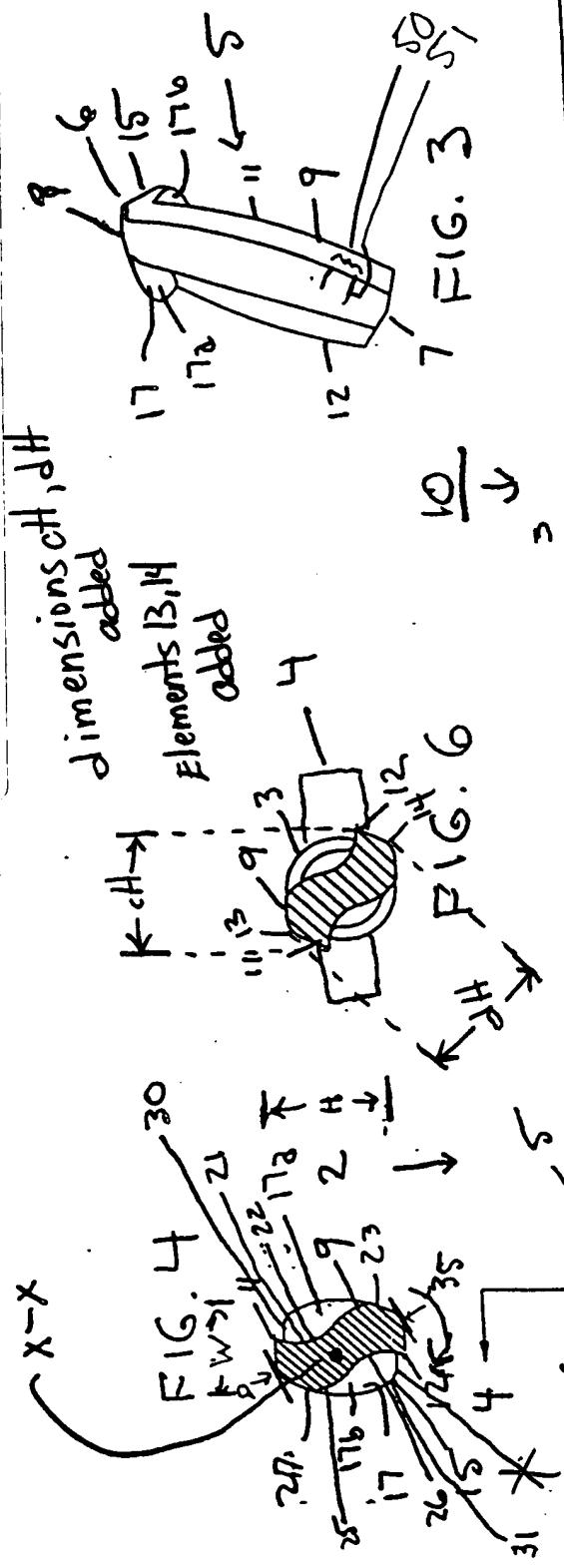


FIG. 1

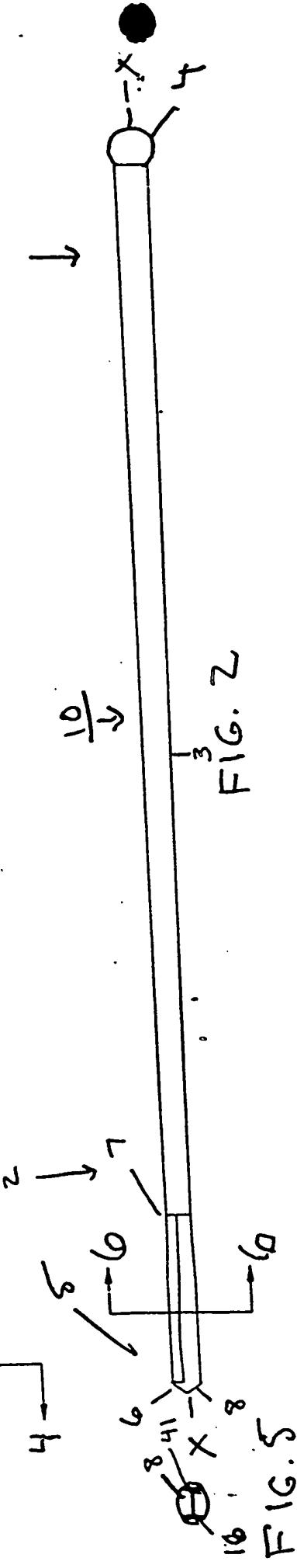


FIG. 2

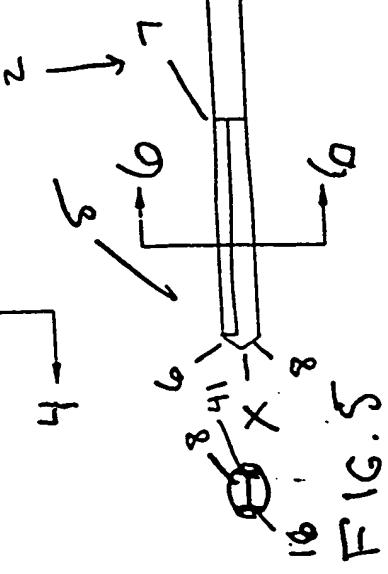


FIG. 5